

Government of the District of Columbia

ZONING COMMISSION



Zoning Commission Order No. 70

Case No. 71-5

October 26, 1973

Pursuant to notice, a public hearing of the Zoning Commission was held on March 14 and March 21, 1973, to consider the preliminary application for a planned unit development and related zone change, filed by the Governments of Czechoslovakia, Hungary, Indonesia and Poland.

FINDINGS OF FACT

1. The site of the proposed planned unit development is located on the south sides of Tilden Street and Linnean Avenue, N. W., near Rock Creek Park: Square 2231, lots 1, 2, 4 and 5; Square 2232, lots 800-806, 808 and 809; Square 2234, lot 803.
2. The area of the subject site is approximately 18 acres, Baist Atlas No. 3, page 27.
3. The subject site is presently zoned R-1-A (One-family detached dwelling - minimum width of 75 feet, minimum area of 7,500 square feet, percentage of lot occupancy 40, 3 stories and 40 feet height limit).

4. The preliminary application for a planned unit development requests that the zoning of the subject site be changed to R-5-C (Medium high density apartment house - specifications set forth in Subsection 7501.24 of the Regulations),
5. The preliminary application proposes the construction of a new Polish Chancery and Embassy and a new Hungarian Chancery and Embassy. The Polish Chancery and Embassy are to be constructed in two separate buildings. The Hungarian Chancery and Embassy are to be constructed as a single building.
6. The site of the proposed planned unit development is surrounded on two sides by public park land. Rock Creek Park and Melvin Hazen Park abut the property on the south and east. There is a steep slope down into Hazen Park from portions of the site. On the west the site is bordered by the embassy/chancery of Kuwait. The portions of Square 2231, not owned by the Government of Hungary, are occupied by a single-family dwelling at the corner of Linnean Avenue and Shoemaker Street and by a largely undeveloped parcel occupied by one large, apparently residential building.. The former building is surrounded by the subject property on three sides,
7. There are other nonresidential uses in the immediate vicinity: the Government of the Congo Embassy and the Government of the Netherlands Embassy and Chancery, the Carnegie Institution of Washington and Rumbarton College.

8. There is existing R-5-C zoning in the area, on Connecticut Avenue, 700 feet from the closest edge of the subject site. The remainder of the area contiguous to the subject site is zoned either R-1-A (specifications set out above) or R-2 (One-family semi-detached dwelling - minimum width of lot 30 feet, minimum area of lot 3,000 square feet, percentage of lot occupancy 40, 3 stories, height limitation of 40 feet).
9. Application for the planned unit development was originally filed in this Case (71-5) on March 17, 1971, by the Governments of Czechoslovakia, Hungary, Indonesia and Poland. The case was first heard for the Zoning Commission by a hearing officer on October 5, 1971. Prior to and at said hearing, there were submissions in behalf of and against the application. Said submissions were both legal and factual.
10. The Zoning Commission, after reviewing and considering the record and the report of the hearing officer, informally advised counsel for the Governments of Poland and Hungary (by letter dated January 17, 1972), that the application had been approved and that a formal order was being prepared. Said letter stated in pertinent part:

This is to inform you that the Zoning Commission ... approved your preliminary application for ... Only those structures which would be permissible under the height, density, floor area ratio and other requirements of Article 75 and those applicable to the R-1-A zone and to no others.

11. Prior to the issuance of a formal order, the United States Court of Appeals for the District of Columbia Circuit rendered its opinion in *Allen, et al v Zoning Commission*, 449 F. 2d 1100 (1971), which decision declared invalid an order of the Zoning Commission based on a hearing attended by less than a quorum of said Commission. Additionally, while the effects and complications of the Allen case were being considered, the District of Columbia Court of Appeals, in *Capitol. Will Restoration Society v Zoning Commission*, 287 A. 2d (D. C. App. 1972), held that hearings on applications for planned unit developments must be "contested cases" as such are defined by the District of Columbia Administrative Procedures Act (Sec. 1-1500, et seq, D. C. Code, 1973 ed.). The "contested case" procedures were not followed by the hearing officer,
12. The order was never issued and the application was reheard by Zoning Commission on March 14 and 21, 1973, under the Rules of Procedure for contested cases which were promulgated on July 27, 1972.
13. The Zoning Commission staff report recommended approval of a preliminary application for a planned unit development subject to eight conditions relating to: zoning the entire site R-5-C, use of the site by only four foreign governments, restricting all buildings to embassy or chancery uses, a maximum height of 40 feet, maximum floor area ratio of 0.4 calculated on a lot-by-lot basis, that the final site plan show a totally integrated plan with relationships between all buildings, parking spaces at the rate of one space for each 500 square feet of gross floor area for space

devoted to chancery use and one space per sleeping room for space devoted to embassy use, all parking spaces to be screened or underground, and appropriate landscaping (TR. 17-18).

14. The Zoning Advisory Council recommended approval of the preliminary application for a planned unit development subject to the eight conditions included in the staff report above (TR. 35).
15. The National Capital Planning Commission recommended approval of the preliminary application (TR. 40). The Commission expressed its wish to review the final application in this case in order to assess the impact on the public park lands which may result from the construction and location of the proposed Embassy/Chancery buildings (TR. 43).
16. While there was substantial citizen opposition to this preliminary application appearing in the record and evinced at the public hearing, negotiations between the **Forest** Rills Citizens' Association and counsel for the applicants settled most of their outstanding differences, leaving only two unresolved.
17. The preliminary application does not conflict with the development plans and policies of the District of Columbia.
18. The site as proposed in the preliminary application for a planned unit development **is** suitable for use as a planned unit development under the specific conditions and guidelines set forth hereinafter.

19. The proposed deviations from the use, height, area, density or bulk provisions of the general provisions of the Zoning Regulations will not have any adverse affect on the neighborhood.
20. The type of development proposed would not be inconsistent with existing development in the area.
21. The traffic generated by the proposed development would not adversely impact the area.
22. Consolidation of the existing diplomatic use of the four foreign governments into one site would be beneficial to the governments involved, the United States of America and the District of Columbia.
23. On August 17, 1973, the Commission issued a proposed order and timely objections and exceptions thereto were filed.

CONCLUSIONS OF LAW

1. The planned unit development process is an appropriate means of controlling the type and level of this development.
2. The change of zone from R-1-A to R-5-C (to be accomplished in connection with the approval of the final application for this Planned Unit Development) is appropriate in this case and is required for the final approval of the Planned Unit Development.

3. The granting of this preliminary application for a Planned Unit Development is in accordance with the Zoning Regulations of the District of Columbia, as amended, and the Zoning Act (Act of June 20, 1938, 52 Stat. 797) as amended.

DECISION

Upon consideration of the findings of fact and conclusions of law herein, the Zoning Commission hereby ORDERS APPROVAL of said Preliminary Application for a Planned Unit Development, subject to the elements, conditions and guidelines hereinafter set forth:

1. An application for change of zone from R-1-A to R-5-C for the entire site shall accompany the final application for a Planned Unit Development.
2. The entire site shall be restricted to use by no more than four foreign governments.
3. All buildings and structures shall be restricted to either embassy or chancery uses.
4. The Governments of Hungary and Poland are permitted to construct embassies and chanceries in accordance with the provisions of this Order.
5. The Governments of Czechoslovakia and Indonesia shall not construct any additional buildings or structures on this property without having applied to this Commission for and have been granted an amendment of this Planned Unit Development.

6. The maximum height of all buildings and structures shall be 40 feet, not to exceed 3 stories.
7. There shall be a maximum floor area ratio of 0.4, and percentage of lot occupancy of 40 for the property owned by the Government of Poland. There shall be a maximum floor area ratio of 0.7, and percentage of lot occupancy of 40 for the property owned by the Government of Hungary.
8. Any buildings or structures constructed by the Government of Poland shall be set back a minimum of 25 feet from the right of way of Tilden Street, N.W.
9. Any buildings or structures constructed by the Government of Hungary shall be set back a minimum of 25 feet from lot 3 in Square 2231.
10. Parking shall be provided at the rate of one space per sleeping room for space devoted to embassy use, and one space per 800 square feet of gross floor area for space devoted to chancery use, not including reception areas, halls, and similar space. All parking spaces shall be underground or screened so as not to be visible from any public property or street.
11. There shall be no change in the wooded character or topography of the area. No tree of a 6" diameter or greater shall be removed unless it is to be covered by a building or structure, or it is necessary to remove it for a primary access road or the tree is diseased or a present danger to occupancy of the site or to the public.

12. All areas not devoted to buildings, structures, access drives or above ground parking, shall be appropriately landscaped so as not to change the character of the area.

The Commission commends the efforts that were made to resolve the points of difference between the applicants and the Forest Hills Citizens' Association. Despite these efforts, two points remained uncompromised. (The Commission recognizes that not all of those in opposition to the application were in agreement with the compromises that were achieved and that the Association, by its good faith negotiations, did not waive its objections to the application.) Careful consideration has been given to all of the objections and exceptions filed by the parties after the issuance of the proposed order, but, in the Commission's view, only two of these merit discussion. It is noted that these are the two issues that the Association and the applicants were not able to compromise during their negotiations,

- a. The Forest Mills Citizens Association strongly contends that only those portions of the subject property which are actually to be developed should be zoned R-5-C and all of the rest of the property should remain R-1-A. In urging this action, the Association expressed its fears as to the impact of rezoning the entire area. The Commission, however, does not believe that such fears warrant the extremely unusual action of only rezoning land upon which improvements are to be built. Exactly the same building restrictions and constraints will be applicable to the property zoned R-5-C as would apply if it were to remain R-1-A. In fact, under the terms of this Order, no further improvements may be constructed without approval of this Commission, even if proposed improvements were to be in accordance with R-1-A restrictions. The Association has raised questions concerning the enforceability of the provisions and terms of this Order since the applicants are foreign governments. The Commission is aware of the problems presented because of the

nature of the applicants, but recognizes that the same enforcement options are available to the Zoning Commission and the city government with regard to the terms and provisions of this Order as are now available under existing R-1-A zoning.

A second basis upon which the association urges "building footprint" zoning is that zoning the entire area R-5-C would be used by other property owners in the area to support applications for rezoning. This position has no validity because the Commission readily recognizes the difference between unlimited R-5-C zoning and the R-5-C. P.U.D. zoning in this case, and this specific language will be a matter of record, as will this entire Order in all future zoning applications in the subject area.

- b. The proposed order would have limited construction by the Government of Hungary to a FAR of 0.4 which would be based on the area of its own property. A similar restriction was placed on the Government of Poland. The Government of Hungary has objected to this restriction and the Commission has decided to raise its FAR to 0.7. This issue appears to have been more vigorously contested in the proposed findings of fact and conclusions of the parties and in their objections to the Commission's proposed order than at the hearing or in the documents filed prior thereto. The opposition to the application have been adamant on this point and the Government of Hungary has stated that the granting of the application with a 0.4 FAR on a lot-by-lot basis would be a pyrrhic victory as it could not develop the proposed embassy-chancery under this Limitation. Accordingly, the Commission has carefully reviewed the record and considered the contentions of the parties in reaching the decision to permit the Government of Hungary an 0.7 FAR.

The applicants, upon being advised that a request for zone change from R-1-A to R-5-c was required in connection with the application, represented that they would abide by the development controls (height, bulk, density) of an R-1-A zone in a planned unit development. The maximum FAR permitted under such controls is 0.4. But, the FAR for a planned unit development is not required to be on a lot-by-lot basis. The limitation is that construction (including existing buildings) may not exceed the specified FAR based on the entire area within the planned unit development. This Commission could, of course, order that the FAR should be on a lot-by-lot basis; it is not required to do so.

In reaching its decision, the Commission noted that the Government of Hungary could, as a matter of right, construct an embassy on its lot with an FAR of 1.2. The R-1-A zone, if not in a planned unit development, has no FAR restrictions as such. The 1.2 FAR is determined by permitted lot occupancy of forty percent and height of forty feet, not to exceed three stories. Accordingly, an FAR of 0.7, keeping the lot occupancy and height restrictions of the R-1-A zone, seems reasonable under all of the facts and circumstances of this case. The proposed new developments plus the existing buildings will be well under the maximum aggregate 0.4 FAR permitted under the Zoning Regulations. Furthermore, any additional construction within the planned unit development area must be approved by the Zoning Commission. There will no longer be a right to build, not even in accordance with the R-1-A zone.

The Zoning Commission is fully aware of its responsibilities to the citizens of the District of Columbia: it also realizes that the District of Columbia is the Capital of the United States


and that. such fact must be taken into consideration in cases such as this. Upon weighing all factors and the facts herein, the Commission is of the opinion that the request of the Government of Hungary is reasonable, that such request is considerate of the views of the citizens and the neighborhood surrounding the subject property, and that the proposed development is consistent with the letter and spirit of the Zoning Act and Regulations.

WALTER E. WASHINGTON




JOHN A. NEVIUS

STERLING TUCKER




GEORGE M. WHITE



RICHARD L. STANTON

ATTEST:



Martin Klauber
Executive Secretary
Zoning Commission